

SUMMARY ANALYSIS OF AMENDED BILL

Author: Nakanishi Analyst: Raul Guzman Bill Number: AB 2737
 Related Bills: See Prior Analysis Telephone: 845-4624 Amended Date: April 05, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Provided Qualified Health Insurance Credit/FTB Report To Legislature On Usage Of Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER – See comments below.

SUMMARY

This bill would create a tax credit for taxpayers that provide qualified health insurance for their employees.

SUMMARY OF AMENDMENTS

This April 5, 2006, amendment added language that would limit the credit to employers that provide qualified health insurance to employees who perform services in California.

As a result of the amendment, the "This Bill" portion of the analysis as introduced February 24, 2006, has been revised. The "Revenue Estimate" and "Revenue Discussion" are unchanged and are provided again for convenience. The department's "Implementation Concern" regarding having employees in more than one state has been satisfied. The remainder of the analysis of the bill as introduced February 24, 2006, still applies.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

5/1/06

THIS BILL

This bill would allow a 15% credit for amounts paid or incurred during the taxable year by a taxpayer that provides qualified health insurance for its employees who perform services in California. The credit would be available for taxable years beginning on or after January 1, 2007, and would be repealed as of January 1, 2012.

“Qualified health insurance” would mean:

- Amounts paid on behalf of employees to a High Deductible Health Plan (HDHP), or
- A Health Savings Account (HSA).

“Qualified taxpayer” would mean:

- Any new small to medium size employer, or
- Any small to medium size employer that has not provided health insurance to their employees during the preceding five taxable years.

“Small employer” would mean a person, as defined in Section 7701(a) of the Internal Revenue Code, or a public or private entity, employing at least 2 but not more than 19 persons.

“Medium employer” would mean a person, as defined in Section 7701(a) of the Internal Revenue Code, or a public or private entity, employing at least 20 but not more than 199 persons.

This bill specifies the following:

- No deduction would be allowed for the same expenses for which the credit was allowed.
- Unused credits can be carried over to future years until the credit is exhausted.
- On or before September 1, 2010, the Franchise Tax Board provides a report on the usage of this credit to the Legislature.
- On or before March 1, 2011, the Legislative Analyst provides a report on the effectiveness of the tax credit to the Legislature.

This bill would allow the credit to Personal Income Tax Law (PITL) taxpayers, and Corporate Tax Law (CTL) taxpayers.

IMPLEMENTATION CONCIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill would allow the credit to “public entities.” The term “public entity” is undefined. If public entity is intended to refer to a governmental entity, the language is unnecessary because a governmental entity is not a taxpayer. It is suggested that public entities be removed from the language.

This bill specifies that FTB is to provide a report to the Legislature on or before September 1, 2010, on the usage of this credit, but is silent on the specific information that should be included in the report.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact of this measure, under the assumptions discussed below, is estimated to be as follows:

Revenue Impact of AB 2737 Enactment Assumed After June 30, 2006 (in Millions)			
	2006-7	2007-8	2008-9
Revenue Impact	-\$5	-\$25	-\$40

This analysis does not account for changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion:

The assumptions and parameters embodied in the estimates are based on state employment data, discussions with industry experts, and a survey of literature related to the California health care industry.

Using Employment Development Department data, it was projected that 1,750,000 employees would be working in qualified taxable small businesses in 2007. Based on industry surveys, it was assumed that 10%, or 175,000, of these employees would receive insurance due to the incentive effect of this proposal.

The average monthly premium cost for Health Maintenance Organizations for 2004 was approximately \$260. The average premium for HDHP's was assumed to be about half of this amount or \$130 per month. A 10% annual growth rate was assumed for the premiums. This resulted in an estimated annual premium of about \$2,000 for 2007 ($\$130 \text{ per month} \times 12 \text{ months} \times \text{growth factor of 33 percent for three years from 2004 to 2007}$).

Employers' share of the insurance costs was assumed to be 85%, or \$1,700 ($\$2,000 \times 85\% = \$1,700$). The total qualified employers' cost for 2007 was projected to be \$298 million ($\$1,700 \times 175,000 \text{ employees}$). With a credit rate of 15%, this would yield total credit amount of \$45 million ($\$298 \text{ million} \times 15\% = 44.7 \text{ million}$). It was projected that only 55% of the credits would be used due to sufficient tax liability. Unused credits would be carried over for six years or until exhausted.

LEGAL IMPACT

If this bill requires taxpayers to provide health insurance to employees located within California in order for costs to qualify for this credit, the credit may be subject to constitutional challenge. The U.S. Court of Appeals for the 6th Circuit ruled in *Cuno v. DaimlerChrysler, Inc.* (2004) 386 F. 3d 738, that Ohio's Investment Tax Credit is unconstitutional because it gives improper preferential treatment to companies to locate or expand in Ohio rather than in other states and, therefore, violates the Commerce Clause of the U.S. Constitution. This case is now pending with the U.S. Supreme Court. The Court will issue its decision on this case by the end of June, 2006. Although the outcome of this decision and its affects on the income tax credits of other states, including California, is unknown, targeted tax incentives that are conditioned on activities in California may be subject to constitutional challenge.

POLICY CONCERNS

This bill leaves the number of years for the carryover period unlimited. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limit since experience shows credits are typically exhausted within eight years of being earned.

LEGISLATIVE STAFF CONTACT

Raul Guzman
Franchise Tax Board
(916) 845-4624
raul.guzman@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov